DRN-3624125

The complaint

Mr J's complaint is about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension. The crux of Mr J's complaint is that he believes the advice was unsuitable for him and this has caused a financial loss.

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr J was concerned about what the recent announcements by his employer meant for the security of his pension, so he met with NTM for advice. On 4 December 2017 NTM completed a fact-find to gather information about Mr J's circumstances and objectives. Amongst other things this recorded that Mr J was 33 years old; he was married with children; he jointly owned his own home, which had an outstanding mortgage; he had no investments but had around £22,000 in cash-based savings; he had a 'very low' to 'low' attitude to risk (two boxes are ticked in the relevant section); and he wanted to retire at 57 on an income of £1,500 a month. NTM also carried out a separate assessment of Mr J's attitude to risk, which appears to have resulted in deeming Mr J as an 'average' or 'balanced' risk investor.

In a report dated 11 December 2017, NTM advised Mr J to transfer his pension benefits into a personal pension and invest the proceeds in a portfolio of funds NTM deemed matched Mr J's attitude to risk. NTM sent the report to Mr J on 21 December 2017. In summary, the suitability report said the reasons for this recommendation were to provide Mr J with the control of his retirement affairs that he wanted; to provide better (lump sum) death benefits for his family; to enable Mr J to break ties with his employer; and to enable Mr J to have flexibility in retirement - the ability to vary his income and take lump sums.

Prior to the 'Time to Choose' deadline of 22 December 2017, a file note records that Mr J chose to remain in the existing scheme and move with it to the PPF.

In a further meeting with NTM on 3 January 2018 to discuss the recommendation, Mr J accepted the recommendation and sometime later, just under £83,000 was transferred to his new personal pension.

In 2021 Mr J complained to NTM, via our Service, about the transfer advice. Mr J said that he was told by the adviser that the BSPS2 wouldn't likely be viable in the long- term and it would eventually go to the PPF; he is paying on-going advice fees; and he is worried about the ups and downs of the investment and the exposure to risk.

NTM didn't uphold Mr J's complaint. In addition to setting out a timeline of the events leading up to the 'Time to Choose' exercise and Mr J's interactions with NTM, in summary it said, there was no evidence the adviser made any comment about the funding position of the BSPS2 as it did not exist at the time; while it appreciated the market falls of February 2020 were of concern, it believed the adviser correctly communicated the nature of the recommended investments to Mr J; it said Mr J was aware of the fees, which he consented to in writing; and it concluded there was no case of mis-selling.

Dissatisfied with its response, Mr J asked us to consider his complaint. An investigator upheld the complaint and required NTM to pay compensation. In summary they said, the transfer wasn't financially viable because the growth rate required to match Mr J's DB scheme benefits wasn't likely achievable. They said Mr J was likely to receive lower retirement benefits as a result of transferring. Furthermore they said no analysis and critical yield was produced for a retirement age of 57 despite Mr J indicating this was his preferred retirement age. They also said there were no other compelling reasons to justify the transfer as being suitable – while Mr J's income need couldn't be fulfilled by his DB scheme (albeit there was no evidence this had been properly established), any flexibility requirement could've been met from his workplace Defined Contribution ('DC') pension scheme, his savings and his other DB pension; his pension was primarily designed to provide an income in retirement not death benefits; and his concerns about the scheme should've been properly addressed and managed. They said if suitable advice had been given, because Mr J hadn't opted into the BSPS2 by the 22 December 2017 deadline, Mr J would've likely remained in the scheme and moved with it to the PPF.

NTM disagreed. In summary, it said:

- The investigator didn't address the complaint Mr J made but instead adjudicated on a complaint he'd not made.
- The investigator misunderstood the timeline of events and the options available to Mr J at the time of the advice.
- The investigator mis-understood the level of benefits set out in the evidence.
- The evidence does not support the apparent conclusion reached that Mr J would've done whatever NTM advised him to do – this contradicts NTM's understanding of Mr J's attitude at the time of the advice.
- The investigator failed to give a balanced perspective to the use of flexible benefits to achieve Mr J's objectives.
- The investigator failed to give appropriate weight to Mr J's circumstances and objectives.
- The investigator failed to appreciate the rationale for NTM's advice.
- There are serious flaws in the investigator's approach to their assessment of the case.

The investigator wasn't persuaded to change their mind. They added that the Financial Ombudsman Service has an inquisitorial remit and it was clear that the heart of Mr J's complaint was about the suitability of the advice provided. They said they didn't agree that the appropriate critical yields were for the PPF at age 65 – Mr J indicated he wanted to retire at 57. They said they didn't feel it necessary to refer to the hurdle rate – albeit it wasn't produced for the PPF – because it didn't accurately reflect the benefits Mr J was considering given up. They said they considered all of the evidence presented by NTM along with Mr J's recorded objectives and the applicable rules and guidance available at the time of the advice in arriving at their assessment – they had not held NTM to a later published standard. They said it was their understanding that Mr J held another DB pension although this wasn't crucial to the outcome of the complaint and their assessment didn't turn on this point.

Because things couldn't be resolved informally, the complaint was passed to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of NTM's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, NTM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr J's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Firstly, I'd like to address NTM's point about the investigator not addressing the complaint Mr J made but instead went on to consider the suitability of the advice, which was not a complaint Mr J had made.

As the investigator told NTM, our role is to look at the whole picture and think about what lies at the heart of a complaint. And I agree with the investigator in this case - I think the crux of Mr J's complaint is ultimately about the suitability of the advice he received to transfer his DB scheme pension benefits to a personal pension. Just because Mr J didn't, or perhaps couldn't articulate his complaint fully or use the language NTM might have expected him to use when complaining about the suitability of the advice, this doesn't mean we can't consider what we feel NTM should've looked at when it considered Mr J's complaint. To not consider the bigger picture would, in my view, not be treating Mr J fairly. I think our role is to do more than just look at a complaint as it's written or explained to us – what the investigator referred to as our inquisitorial remit. And it is for these reasons that I'm satisfied it is appropriate for me to address what I believe lies at the heart of Mr J's complaint, which is the suitability or otherwise of the pension transfer advice Mr J received in 2017.

Financial viability

NTM carried out a transfer value analysis report (as required by the regulator) showing how much Mr J's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). I can see this was based on Mr J's existing BSPS scheme benefits. But at the time of the advice, Mr J didn't have the option to remain in the BSPS. And NTM understood this and documented as such – meeting notes from the fact-find meeting of 4 December 2017 record a discussion about the 'Time to Choose' information and Mr J's decision whether to opt into the BSPS2 or move with the existing scheme to the PPF. So basing the analysis on the existing scheme was somewhat redundant and in my view wasn't helpful to Mr J.

I can see that when NTM met with Mr J in early January 2018 to discuss its recommendation as set out in its suitability report of 11 December 2017, it said that the only option for Mr J at this stage was to consider a transfer or move to the PPF. I understand this was because Mr J had decided to remain in the scheme and move with it to the PPF. NTM indicated in its first meeting that it might not be able to complete its advice by the deadline of 22 December 2017.

But the suitability report is dated 11 December 2017 some 11 days earlier. And given the TVAS is also dated 11 December 2017, it appears NTM had formulated its advice at this stage, so I think it ought to have been in the position to send its suitability report to Mr J on or very soon after 11 December 2017. I see no reason why NTM was not in a position to do so. I think in the circumstances NTM ought to have been mindful of the looming deadline and prioritised things to enable Mr J to make a properly informed decision taking account of all three of the options available to him – opt into the BSPS2, move to the PPF or transfer out.

Because I think NTM was reasonably in a position to issue its advice to Mr J sooner, I think its analysis and advice should have taken into account the benefits available to Mr J through the BSPS2.

While I accept the BSPS2 wasn't guaranteed to go ahead at this time, details of the scheme had been provided – the BSPS2 would've offered the same income benefits but the annual increases would've been lower. And in my view, because all of the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, I think it was reasonable for NTM to have factored the benefits available to Mr J through the BSPS2 into its analysis and advice so that he was able to make a properly informed decision. I'll come back to this point later on.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr J was 33 at the time of the advice and it was recorded in the advice paperwork that he wanted to retire at age 57. The TVAS report of 11 December 2017 set out the relevant critical yields. To match Mr J's existing scheme benefits at age 60 the critical yields were 6.86% assuming Mr J took a full pension and 6.02% if he took a cash lump sum and a reduced pension. The critical yields to match the benefits available through the PPF at age 60 were 5.73% and 5.53% respectively.

But as I've said above, Mr J remaining in the BSPS wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

I'd add here too that, given NTM's advice was predicated on Mr J wanting to retire at age 57 - notwithstanding my view that I don't think Mr J's retirement plans were in anyway set in stone as I will explain later on – I find it surprising NTM didn't produce critical yield figures based on a retirement age of 57. I think this would've been more meaningful and relevant to Mr J. The early retirement factor information was available in Mr J's 'Time to Choose' pack, so I think it was possible for NTM to produce this analysis. Because of the shorter term to retirement, I think it's likely the critical yields would've higher than those based on a retirement age of 60. I think this is further evidence that NTM's analysis wasn't helpful to Mr J.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.6% per year for 26 years to retirement (age 60) – it was the same per year for 23 years to retirement (age 57). I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr J's recorded 'balanced' attitude to risk (I'll discuss this in more detail below) and also the term to retirement. In my view, there would be little point in Mr J giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Here, the lowest critical yield based on a retirement age of 60 was 5.53%, which was based on Mr J taking a reduced pension through the PPF. It was 6.02% if Mr J took the same benefits at 60 through the existing BSPS.

So, based on taking the same benefits at age 60 through the BSPS2, I think the critical yield would've been somewhere between those figures, and likely closer to 6.02%. At age 57, I think it would be likely higher than 6.02%.

This rate was higher than both the discount rate and the regulator's middle projection rate.

Given this, I think it was clear that Mr J was likely to receive benefits of a substantially lower overall value than those provided by the BSPS2 at retirement by transferring out and as a result of investing in line with a balanced attitude to risk. The critical yields required to match the benefits available through the PPF were 5.73% and 5.53%, so I don't think the position was very different if the scheme moved to the PPF.

Overall, even if the BSPS had moved to the PPF and Mr J's benefits were reduced, he was unlikely to be able to improve on those benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr J would be financially worse off in retirement. So based on this alone, I don't think a transfer was in Mr J's best interests.

I can see NTM suggests too much weight has been placed on discount rates. I haven't based my findings solely on this, but I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses, like NTM, were free to use the discount rate as this was considered a reasonable assumption of the likely returns. And in any event, I've considered this in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr J's attitude to investment risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

NTM says the investigator failed to consider the hurdle rate, which it says is a useful tool to understand the level of risk with a personal pension. But the hurdle rate ignores any spouse's pension benefit as well as increases in payment. So in my view, reference to this rate underplays the true value of the DB scheme benefits Mr J was considering giving up. I still consider reference to the critical yield gives a good indication of the value of benefits Mr J was considering giving up. I also think it is a relevant and important consideration here, particularly given Mr J's circumstances and the fact that I don't think he could realistically say with any certainty whether he would want to take a fixed regular income at retirement or not. Mr J wasn't expecting to retire for another 20 plus years – so it's entirely possible that he would want at least some guaranteed income in retirement, which he could achieve by taking benefits from the DB scheme.

NTM has also referred to the drawdown analysis – it says that the advice to transfer clearly demonstrated a financial benefit to Mr J from age 60 using the FCA's assumed growth rate of 5%: Mr J could replicate the benefits from his DB scheme and his fund would last beyond his life expectancy or he could take a greater initial income of £9,066 (increasing) which was sustainable to age 100.

I've already said why I think the transfer was not financially viable and why I think there would be little point in Mr J giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But to address NTM's point about Mr J being able to draw a higher initial income from age 60 – firstly as I referred to above, Mr J indicated his preferred retirement age was 57, so I don't think NTM's reference to what income Mr J could take from age 60 is relevant here. The advice was predicated on a retirement age of 57. Secondly and in any event, the sustainable income of £9,066 to age 100 NTM refers to, assumes a consistent 5% annual growth rate.

NTM has not shown for example how this might be impacted by factors such as periods of poor performance and/or increases in inflation – there is no stress testing. Furthermore this assumes that Mr J would be happy and it was suitable for him to take his pension benefits via drawdown. But I'm not persuaded it was. I'll explain why.

Notwithstanding my view that by adopting a balanced risk approach meant Mr J was likely to be worse of in retirement as a result of transferring, I have concerns about how NTM deemed Mr J was prepared to take an 'average' or 'balanced' approach to risk with this pension. In the fact-find document, it's recorded that Mr J saw himself as a 'very low' to 'low-risk' investor – both boxes are ticked in the relevant section of this form. The description of both risk categories are, in my view, reasonably clear and in plain easy to understand language, so I think Mr J would've likely understood them. This was not an assessment where answers to a series of questions are scored to arrive at an overall risk profile – the question asked of Mr J in the fact-find was a simple and direct one: '*Which statement reflects your attitude to risk'.*

Given this, together with Mr J's lack of any prior investment experience, it leads me to believe a very low or low-risk approach was the true level of risk Mr J was prepared to take here.

Yet in the risk profile questionnaire, some of the answers Mr J gave conflict with the very low / low-risk group he originally indicated he saw himself in, in the fact-find – albeit the first and in my view important question Mr J was asked still indicated he was a 'low risk taker'. And this assessment appears to have resulted in categorising Mr J as an 'average' or a 'balanced' risk investor. It seems to me from the evidence presented that NTM 'talked up' Mr J's risk profile to 'balanced' as part of this separate risk profiling assessment and in its discussions with him to support or justify the advice to transfer. NTM's file note of the meeting of 4 December 2017 includes the following:

'We discussed the RP which indicated that he had a Balanced ATR. In the FF he took a more cautious approach and when challenged confirmed that his short term savings were kept secure and he wanted to maintain this. However pensions cannot be accessed for many years and when considering investment rather than savings the RP gave a more accurate picture. We discussed risk and reward and the need to achieve a return large enough to build a suitable pension... It was agreed that we should work on the basis of a Balanced ATR.'

And the file note from the 3 January 2018 meeting records:

'[Mr J] confirmed that after reflecting he is happy to invest in a Balanced way as outlined in the report to get a suitable return. I confirmed that [Mr J] should not proceed unless he accepts a balanced attitude to risk as outlined in the report. [Mr J] confirmed he was happy to accept the risk as outlined in the report.'

While the file note from 4 December 2017 appears to suggest the adviser drew a distinction between the answer to the attitude to risk question in the fact-find with those in the risk profile questionnaire to justify the change and increase in Mr J's risk profile – they indicated one was more about cash savings versus longer-term pension investment - as I said above, I think the fact-find question was a direct one and did refer to his attitude to investing. I think NTM should've placed greater weight on Mr J's answer here.

I accept that the adviser's job is to advise, so this might include challenging or questioning an investor's risk profile; particularly if the profile doesn't match their knowledge or experience or they give conflicting answers in a profiling assessment.

But on the other hand and in this case, Mr J had given what I think was a clear indication as to the level of risk he was prepared to take with his pension. This was not a minor investment in an ISA where a small regular monthly contribution was at stake and in the overall scheme of things might not have much impact – this was a significant investment and a transaction that was irreversible.

While I accept Mr J was relatively young and the term to retirement was long, taking everything into account, I don't think it was fair or reasonable for NTM to have encouraged/persuaded Mr J to take on a greater level of risk than he clearly indicated he was prepared to take. I think NTM's advice ought to have been based on Mr J's willingness to accept at best a low-risk attitude towards investing.

Of course financial viability isn't the only consideration when giving transfer advice, as NTM has argued in this case. There might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income need

NTM recommended the transfer because Mr J wanted the flexibility that is available through a personal pension – the ability to *'fashion his income'* towards his target in retirement, which couldn't be achieved by remaining in the DB scheme.

But I'm not persuaded that Mr J knew with any certainty whether he required flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, if that's what he ultimately required.

Mr J was only 33 years old at the time of the advice, and while I accept it's possible he might have given some thought to his future retirement, given it was more than 20 years away and he still had the majority of his working life in front of him, I don't think he had anything that could reasonably be described as a set retirement plan. Mr J's recorded target retirement age was 57, which in my view simply reflects the earliest age legislation (currently) permits pension benefits can be taken from. I think Mr J, like most people if asked, liked the idea of retiring as early as possible – but I'm not persuaded it was a firm objective given his retirement was so far into the future.

Of course Mr J already had the option of taking early retirement before the scheme's normal retirement age of 65 – he didn't have to transfer out to achieve this. I accept Mr J couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr J had to take those benefits at the same time. But nothing here indicates that Mr J had a likely future need to take a cash lump sum and defer taking his income. It seems likely Mr J's mortgage would be repaid before his retirement and nothing was recorded about any intended large capital expenditure. I also haven't seen anything to indicate that Mr J had a strong need to vary his income throughout retirement – I don't think Mr J really knew what his income needs would be at this stage. So it strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr J's at the time.

But importantly, Mr J was contributing to his workplace DC pension scheme. And the nature of a DC scheme means this already provided Mr J with flexibility – he wasn't committed to take these benefits in a set way. While NTM recorded Mr J was contributing to this pension, unfortunately it didn't record either the current value or the contribution rate. In my experience the typical contribution rate was between 16-20% made up of a 10% employer contribution and between 6% and 10% by the employee. So I think it's more likely than not Mr J's DC pension was receiving a contribution of not less than 16% of his salary.

On this basis, by age 57, and without accounting for any salary increases, increases in contribution rate or investment growth, Mr J's pension could be worth in excess of £115,000. Including investment growth, I see no reason why this wouldn't be £200,000 or perhaps more given the potential length of the investment term. I think Mr J could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr J retained his DB pension, this combined with his new workplace pension, would've likely given him the flexibility to retire early - if that's what he ultimately decided.

So in any event, Mr J didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. But if Mr J did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age. And by opting into the BSPS2, he would've retained the ability to transfer out nearer to retirement if his needs later demanded it. I think NTM could've explained this more clearly to Mr J.

Turning to Mr J's income need – while I don't think Mr J could reasonably have had any real understanding of what retirement income he would need in 24 years' time - and I can't see that NTM attempted to carry out any detailed analysis of his likely expected income and expenditure in retirement - it was recorded that Mr J wanted £1,500 a month. And based on this, I've seen nothing to indicate that the income from the BSPS2 or the PPF (if the new scheme didn't go ahead) wouldn't have provided Mr J with, at the very least, a solid guaranteed income foundation upon which his other provision could supplement - at least until his state pension became payable - to likely meet his overall income need.

As I said earlier on, NTM didn't produce analysis based on a retirement age of 57. But according to NTM, at age 60 under the existing scheme Mr J would be entitled to an annual pension of around £5,984. Because of the reduced revaluation factors, under the BSPS2 this figure would be lower, but in my view still close to it. Although this alone wouldn't meet Mr J's income need (and at age 57 the income gap would be greater) Mr J would've likely had a significant amount in his workplace DC pension, which he could draw on flexibly, as and when needed, to top up his income or take a lump sum. Given the potential size of Mr J's DC pension, it's possible that if he did decide to retire at 57 (by no means certain) he could draw on this pension alone to meet his initial income need allowing him to defer taking his DB scheme benefits for longer to achieve a higher initial income from this.

I'm mindful too that the advice paperwork records Mr J had another DB pension scheme with a previous employer; his wife had her own pension; and Mr J was saving around £500 a month – he already had around £22,000 saved. So given the term to his likely retirement, I think these other means could've given Mr J further scope to supplement his income and provide the opportunity for him to retire early, if he ultimately decided to do so. I think NTM could've explored this in more detail with Mr J.

I can see NTM disputed Mr J held another pension in its response to the investigator's assessment, saying that it *was "based on an erroneous assumption... which in turn appears to be based solely on a note scribbled on one of the fact-find documents...reference to a '2nd pension with [X]' appears to have been assumed by the investigator to refer to Mr J."* NTM suggests that this pension was held by Mr J's wife.

But why would the adviser refer to it as a '*2nd pension'* if it didn't belong to Mr J? And Mr J was the client they were providing advice for. In any event Mr J has provided evidence of the existence of this pension as documented at the time. And while it might not be of significant value (NTM didn't obtain the value of it) as I said above, I think this could've played a part in offering Mr J further scope to supplement his income and provide the opportunity for him to retire early, if he ultimately decided to do so.

If the BSPS2 hadn't gone ahead, Mr J would've moved with the scheme to the PPF. And while the income Mr J would receive was likely lower than the pension he'd be entitled to under the BSPS2 on the basis of taking a full pension, I don't think it was substantially lower such that it would've made a difference to the recommendation. As I've said above, Mr J's retirement plans and needs weren't formulated, but I think his income need could've likely been met by utilising his DC scheme and other provision to draw on flexibly until his state pension became payable.

So overall, I think Mr J could've likely met his income needs in retirement through the BSPS2 or the PPF. And I don't think it was in Mr J's best interests for him to transfer his pension just to have flexibility that I'm not persuaded he really needed.

Death benefits

NTM also recommended the transfer to enable Mr J to have higher lump sum death benefits to provide for his family.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr J. But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr J about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. And I don't think NTM explored to what extent Mr J was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr J was married and so the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr J predeceased her. I don't think NTM made the value of this benefit clear enough to Mr J. This was guaranteed and escalated and it would also be calculated as if no cash lump sum had been taken. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, NTM should not have encouraged Mr J to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful there that Mr J already had lump sum death benefits available to him. He had death-in-service benefit, which would provide his wife with a lump sum if he died before retirement. And he was also contributing to his workplace DC scheme, which he could nominate his wife as beneficiary of if he hadn't already done so.

Furthermore, if Mr J genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think NTM should've instead explored additional life insurance. I appreciate that the suitability report mentioned a whole of life policy with a sum assured equivalent to the transfer value – this was discounted by the adviser because of the cost (£47.35 per month). But I don't think that this was a balanced way of presenting this option to Mr J.

Basing the quote on the transfer value of Mr J's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr J wanted to leave whatever remained of his pension to his wife and family, which would be a less than this if he lived a long life and/or if investment returns were poor.

So, the starting point ought to have been to ask Mr J how much he would ideally like to leave to his family, taking into account the lump sum benefits he already had, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide, particularly given Mr J's young age and good health. Given Mr J's monthly disposable income, I see no reason why this wouldn't have been affordable. I think it is this NTM ought to have ultimately recommended to satisfy Mr J's objective rather than recommend he transfer out of his DB scheme to achieve things.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr J. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the BSPS

I understand that Mr J, like many of his colleagues no doubt, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and so he was likely worried his pension would end up in the PPF. There were lots of negative things circulating about the PPF. So it's quite possible that Mr J was leaning towards the decision to transfer because of the concerns he had - his negative perception of the PPF and his concerns about the BSPS2. But it was NTM's obligation to give Mr J an objective picture and recommend what was in his best interests.

As I've explained, by this point details of the BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr J through the BSPS2 into account, particularly given the timing of the advice and the looming 22 December 2017 deadline. I think this should've alleviated some of Mr J's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that NTM should've done more to reassure Mr J that the scheme moving to the PPF wasn't as concerning as he thought or been led to believe. Importantly Mr J still had the option of taking early retirement through the PPF. Mr J didn't have any firm retirement plans at this stage - but I think the income available to Mr J through the PPF would've still provided a solid base, which his DC scheme and other means could supplement to likely meet his overall income need at retirement. Crucially he was also unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. Mr J might not have been able to later transfer out of the PPF – but given what I said earlier on about him already having flexibility, I don't think there was an apparent need for him to do so.

So I don't think that Mr J's concerns about his DB scheme was a suitable or compelling reason to recommend a transfer out of the DB scheme altogether.

Suitability of investments

Because I think the level of risk Mr J was prepared to take with his pension was lower than the risk profile of the recommended investment funds, I think the investment strategy recommended was unsuitable. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr J, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr J should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I accept that Mr J was likely motivated to transfer out of the BSPS and that his concerns about the scheme were real. And I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr J. But NTM wasn't there to just transact what Mr J might have thought he wanted. The adviser's role was to really understand what Mr J needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr J was very likely to obtain lower overall retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

Mr J didn't have any real retirement plans, so he shouldn't have been advised to transfer out of the scheme just to have flexibility that I'm not persuaded he really needed, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension at this time when I think he reasonably had the opportunity of opting into the BSPS2.

Not only could NTM have advised Mr J to opt-into the BSPS2 as a precaution before it completed its advice – he could've still transferred out before March 2018 and it might have been possible for him to cancel his choice and still move to the PPF. But as I explained earlier on, I think NTM was in a position to deliver its written advice to Mr J sooner and to have considered the benefits available to him through the BSPS2 in doing so. Mr J might have chosen to remain in the scheme and move with it to the PPF before he accepted NTM's recommendation, but if things had happened as they should have and in a timely manner, I think NTM could and should've advised Mr J to opt into the BSPS2.

I appreciate, as I said earlier on, that the BSPS2 wasn't guaranteed to go ahead at this time. But as I've also already said, I think everything pointed to it going ahead, so this ought to have been the position NTM adopted – I think it is fair and reasonable for it to have done so. And while Mr J indicated he wanted to retire at 57, as I've explained this was more than 20 years away and Mr J's plans could've changed.

So, I don't think that it would've been in his best interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr J would've retained the ability to transfer out of the scheme nearer to his retirement age - if his needs later demanded it. Mr J was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr J chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So I think NTM should've advised Mr J to opt into the BSPS2.

Of course, I have to consider whether Mr J would've gone ahead anyway, against NTM's advice. NTM argues this is the case saying that Mr J was aware that transferring out of the BSPS was the only alternative to falling into the PPF and it is wrong to assume that, given his views about his employer and the PPF, he would've blindly followed any advice or that he was not conscious of what he was doing.

I've considered this carefully, but I'm not persuaded that Mr J would've insisted on transferring out of the BSPS against NTM's advice.

I say this because, while as I've already said Mr J was likely motivated to transfer when he approached NTM, on balance, I still think Mr J would've listened to and followed its advice if things had happened as they should have and NTM had recommended he not transfer out of the scheme. Mr J doesn't appear to have had much, if any prior investment experience (I don't consider contributing to a DC pension reasonably constitutes prior investment experience) so I'm not persuaded Mr J possessed the requisite skill, knowledge or confidence to against the advice he was given, particularly in complex pension matters. Mr J's pension accounted for almost all of his private retirement provision at the time and I believe his attitude to investment risk was low. So, if NTM had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I've already explained why I don't think the only alternative available to Mr J to avoid the PPF was to transfer. And I'm not persuaded that any concerns Mr J had about his employer, or the concerns he had about the scheme, were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. Regarding Mr J's desire to break all ties with his employer - it's clear that he still worked for the same employer. And he hadn't indicated he intended to find alternative employment. Mr J was also a member of his employer's new DC pension scheme. So, Mr J wasn't going to achieve a separation from his employer by transferring, as he would remain tied to the employer in other respects.

So if NTM had clearly explained this and that Mr J could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr J would've insisted on transferring out of the BSPS if NTM had given suitable advice and recommended that he should opt into the BSPS2.

In light of the above, I think NTM should compensate Mr J for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr J as far as possible, into the position he would now be in but for the unsuitable advice. As I have explained above, I consider Mr J would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given and delivered to him in a timely manner.

NTM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

NTM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr J and our Service upon completion of the calculation.

For clarity, Mr J has not yet retired, and I understand he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr J's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, NTM should:

- calculate and offer Mr J redress as a cash lump sum payment,

- explain to Mr J before starting the redress calculation that:
  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mar J receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr J accepts NTM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr J for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr J's end of year tax position.

Redress paid to Mr J as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr J's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require NTM Financial Services Ltd to pay Mr J the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that NTM Financial Services Ltd pays Mr J the balance.

If Mr J accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 September 2023.
Paul Featherstone
Ombudsman